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ABSTRACT

This report discusses the use of mediation and alternative dispute resolution approaches in special education disagreements between the school and the parents of a child with a disability. The procedural safeguards and due process provisions of the Individuals with Disabilities Education Act (IDEA) are explained. The report notes alternative dispute resolution practices, such as negotiation, mock or mini-trials, due process hearings, and litigation. The components and procedures of mediation, and the growth in the use of mediation are discussed. Trends and variations in mediation strategies are provided, including descriptions of the single mediator model, co-mediator model, and panel mediator model. Benefits of each model are discussed. Other informal and formal alternative dispute resolution strategies that are being used in special education are reviewed, including individual strategies (ombudsperson or advocates) and group strategies (impartial reviews, pre-hearing conferences, advisory opinion process, and neutral conferences). The report also identifies locally based conflict resolution options, including: parent/professional partnerships, peer mediation programs, and staff development/training in conflict resolution. The report concludes by discussing the "lessons learned" from state and local educational agencies, and by indicating a need for ongoing evaluation information regarding the short- and long-term impact of mediation. (Contains 30 references.) (CR)

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MEDIATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN SPECIAL EDUCATION

by Judy A. Schrag, Ed.D.

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ABSTRACT

This report is a description of mediation and other alternative dispute resolution approaches and options being utilized in special education within state and local education agencies across the country. The information in this report was obtained from several sources: telephone discussions with representatives of several state education agencies (SEAs), telephone discussions with several mediation experts, previous mediation work carried out by Project FORUM, and a review of the literature on mediation. A description of mediation within the broader context of alternative dispute resolution is provided. Single mediation, co-mediation, and team or panel mediation approaches, as well as other alternative dispute resolution approaches being implemented across the country, are also discussed. Finally, various lessons learned and observations are summarized for consideration by state education agencies.

MEDIATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN SPECIAL EDUCATION

BACKGROUND AND PURPOSE

Procedural Safeguards and Due Process Procedures

The Individuals with Disabilities Education Act (IDEA), the federal special education law, relies on a system of procedural safeguards to assure that each eligible child receives a free appropriate public education (FAPE) in the least restrictive environment (LRE). The parent is invited to a meeting at which a team that includes the child's teacher develops an individualized education program (IEP) for the child. The IDEA entitles parents and school districts to a due process hearing, conducted by an impartial hearing officer, to resolve disputes or disagreements between parents and school districts. Disputes may be regarding assessment, eligibility, least restrictive environment placement, or appropriateness of programs and services provided. Provisions consistent with those in IDEA have been incorporated into the laws of every state. Further specification also exists in the form of regulations implementing these federal and state laws.

Experience during the past twenty years has led to increased concerns regarding the litigious and confrontative nature of the special education process (e.g., that due process often overshadows needed emphasis upon instruction and learning). Zirkel (1994) has identified the following concerns with the existing due process system:

- The process has become too time consuming and open ended.
- The process is overly adversarial.
- Due process hearing and/or judicial costs (human and monetary) are excessive.
- The majority of cases that reach the courts are either disputes about attorney's fees or fact-based determinations about a particular child's IEP.
- Parents perceive the process as unfair.

In response to the above and other concerns, states have turned to mediation and other alternative dispute resolution procedures. Under federal law, states are permitted to add alternative dispute settlement procedures as long as these procedures do not compromise the due process hearing rights of a child with a disability. Mediation is mentioned in a notation under Reg. 300.506 {20 US 1415 b(2)} which states that "mediation can lead to resolution of differences between parents

and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parents rights..."

Congressional discussion is currently underway regarding re-authorization of the discretionary programs of IDEA. Congress is considering a change in IDEA that would require states to make mediation available for resolution of special education disputes or differences between parents and school personnel. As of the writing of this report, Congressional action has not been completed; however, it is anticipated that such a change is likely to occur. A mediation policy change in IDEA can provide an excellent opportunity for state education agency (SEA) personnel to review their current mediation and other alternative dispute resolution procedures, and to make revisions that build on the experiences in their own state as well as others across the country.

Purpose of this Document

The purpose of this document is:

- To describe mediation within the broader context of alternative dispute resolution;
- To briefly describe the use of mediation and other forms of alternative dispute resolution within special education;
- To present some trends and variations of mediation and other forms of alternative dispute resolution being implemented within special education across the country; and
- To present some lessons learned and recommendations for consideration by state and local education agencies.

With the above purposes in mind, this document was generated from several sources: a review of available documents that the National Association of State Directors of Special Education (NASDSE) received from SEAs as a part of earlier work in mediation; information received from the Regional Resource Centers regarding known mediation and other alternative dispute resolution practices within local and state education agencies; telephone discussions with a number of SEA state directors of special education and other staff members or contracted individuals responsible for mediation, due process, or alternative dispute resolution procedures; telephone discussions with other persons involved in mediation; and a selected review of the mediation and dispute resolution literature. While this document provides information that can be useful for local school districts, Regional Resource Centers, colleges and universities, and other organizations and individuals, the primary intent of this document is to provide planning information for state directors of special

education and other SEA staff responsible for mediation and other alternative dispute resolution efforts.

A CONTINUUM OF ALTERNATIVE DISPUTE RESOLUTION PRACTICES

Over the past three decades, dissatisfaction with the formal judicial process has led to the development and expansion of a range of non-judicial alternatives for resolving various kinds of disputes. In 1965, a Presidential Commission on Law Enforcement and the Administration of Justice directed national attention to the country's overburdened judicial system and encouraged experimentation with alternatives both inside and outside the court system. In 1976, the American Bar Association established a Special Committee on the Resolution of Minor Disputes (now called the Standing Committee on Dispute Resolution). Additional leadership for exploring alternative dispute resolution options has come from the U.S. Department of Justice, the American Arbitration Association, and even the Ford Foundation. In 1982, five foundations and corporations established the National Institute for Dispute Resolution (NIDR) to serve as a resource for the development of innovative ways of resolving disputes (NIDR, 1991).

Mediation has been used since the late 1970s as an alternative to civil litigation to resolve contested divorces, especially child custody, visitation, and support issues. By the mid-1980s, child custody mediation was widely used, and many states had adopted legislation requiring the use of mediation in contested cases. Mediation has also been used in many different areas including business and commercial disputes, small claims courts, environmental concerns, public-policy conflicts, consumer disputes, and international conflict (Bush, 1992). Lawyers and judges all over the country are suggesting mediation as an alternative to hearings. Today, there are more than 500 community mediation programs across the country to resolve minor interpersonal disputes between neighbors, acquaintances, co-workers, etc. Mediation has been found to be a successful method for resolving other educational disputes such as disciplinary problems, peer arguments, parent and teacher conflicts, and teacher/administrator problems (Dobbs, Primm, & Primm, 1991; Savoury, Beals, & Parks, 1995).

The range of alternative dispute resolution strategies, including mediation, can be placed on a continuum, and grouped according to how the decision is reached, who makes the decision, extent of formality, costs incurred, amount of preparation, and extent of privacy provided (see Figure 1 below adapted from Slaikeu, 1989).

Dispute Resolution Continuum

Negotiation/ Facilitation Ombuds Advocates	Mediation/ Conciliation	Mock/Mini Trial Pre-Hearing Conference	Arbitration	Med-Arb	Due Process	Litigation

Decisions by the Parties
Informal
Low Cost
Limited Preparation
Private

Decisions by a Higher Authority
Formal
High Cost
Extensive Preparation
Public

Following are definitions of alternative dispute resolution strategies displayed in Figure 1 that can occur prior to due process and litigation (NIDR, 1991).

Negotiation: Negotiation is a problem-solving dispute resolution process in which the parties voluntarily discuss their differences in an attempt to reach an agreement. All participants have a stake in the outcome of the dispute. Successful negotiation results in an agreement or an exchange of promises. Parties maintain control over the outcome of negotiation.

Facilitation: Facilitation describes a collaborative process in which a third party is responsible for managing the group discussion so that the parties in conflict can focus on substantive issues and achieve their goals. A facilitator works with the group to establish an agenda, suggest and enforce ground rules, keep the discussion on track, and offer suggestions on how the group is working. An ombudsperson could serve as a fact finder or facilitator. In addition, facilitation and negotiation can be done by advocates or other third parties.

Conciliation/Mediation: Conciliation or Mediation is a dispute resolution process in which a mediator, two mediators, or a panel of mediators assist the disputing parties. The mediator(s) acts as an impartial facilitator to help the disputants identify and discuss issues of mutual concern, explore solutions, and develop mutually-acceptable agreements. In mediation, the disputing parties usually meet face-to-face. The mediator does not have the power to impose a binding decision or outcome on the parties.

Pre-Hearing Conferences: Pre-hearing conferences are informal meetings held for the purpose of clarifying the issues in dispute, to insure that communication among the parties is clear, and to insure that all parties understand their procedural rights.

Mock or Mini-Trials: Mock or Mini-Trials include abbreviated presentations of evidence to one or more expert neutral facilitator(s) and others with decision-making authority. Following the presentation of evidence and a questioning period, the decision-makers and facilitator will meet for a confidential settlement discussion.

Arbitration: Arbitration is a dispute resolution process in which a third party is empowered to recommend a settlement for two or more disputing parties. In an arbitration hearing, each side has an opportunity to present the facts and merits of the case to the arbitrator. Following these case presentations, the arbitrator issues an opinion. Because due process rights of the parties cannot be jeopardized, arbitration opinions in special education disputes may not be binding (e.g., due process rights may not be delayed or denied), on the issue(s) in question. Arbitration also must be voluntary to parents.

Med-Arb: Med-Arb is a melding of mediation and arbitration in which disputing parties authorize a neutral third party to mediate if they reach an impasse. To break an impasse, the disputants authorize the third party to make a decision, which is non-binding (e.g., due process rights may not be delayed or denied), on the issue(s) in question. Med-Arb must also be voluntary to the parents. Persons knowledgeable about mediation, arbitration, and due process, as well as a content expert(s) specific to the issue(s) in dispute, can facilitate the process.

Due Process: The IDEA provides for a set of procedural safeguards to guarantee that each eligible child receives a free appropriate public education in the least restrictive environment. If disputes arise between the parent and the school district with regard to eligibility, appropriateness, or any other matter under IDEA, they may be resolved through a due process hearing conducted by an impartial hearing officer. Due process hearings are quasi-formal (e.g., not held in a court setting). Although not required, attorneys are generally present. A written decision of the hearing officer must be rendered within 45 days.

Litigation: Litigation is a formal process in which persons with a dispute obtain an attorney who presents their case to a judge and/or jury. The decision is made by the judge and/or jury, reduced to writing, and is binding unless appealed.

MEDIATION MODELS USED IN SPECIAL EDUCATION

Growth in Mediation

A growing number of concerns, both philosophical and practical, associated with the use of due process hearings to resolve disputes under IDEA, has resulted in the increased use of mediation and other forms of alternative dispute resolution across the country. Specifically, due process hearings can further exacerbate adversarial relationships between parties. Communication often becomes strained and constrained and partnership does not flourish in an atmosphere focused on compliance and enforcement. In addition, the fact-finding focus of a due process hearing is often unresponsive to the emotional aspects of a conflict. Even though due process hearings may result

in a "winning" decision for one of the parties, experience has shown that one or both sides often harden their positions as a result of the adversarial process. Implementation of the due process judgment may be carried out with hard feelings, intense emotion, and lack of real cooperation/agreement. Due process focuses on credibility of claims rather than underlying issues and interests behind claims.

Formal mediation systems have been implemented in the majority of states. Ahearn (1994) reported that a total of 39 (or 78 percent) of the 50 states operate special education mediation systems. This compares to 70 percent in an earlier NASDSE survey (Sykes, 1989). The majority of state mediation systems were initiated in the late 1980s, with the first two mediation systems developed in Connecticut and Massachusetts in 1975. Of the remaining eleven states that did not report operating a state mediation system, two were in the process of developing formal mediation procedures. Most of the states without formal mediation systems, however, have some form of mediation (e.g., informal pre-hearing settlement conferences, reliance on local district implementation, or other informal mediation procedures [Ahearn, 1994]).

Similarities and Differences Across Mediation Approaches

The goal of all mediation models/options is the same—resolution of a specific conflict with the help of a trained, neutral third party(ies) and without the formal, legalistic procedures involved in a due process hearing. Despite the approach utilized, mediation has the following characteristics (Engiles, Quash-Mah, Peter, & Todis, 1995):

- It is a voluntary process in which the primary parties must be willing to meet and discuss their concerns in order to negotiate a mutually-satisfactory agreement.
- It provides an opportunity and structure for the participants to have a full discussion of issues and to work collaboratively to create solutions.
- It is an empowering process in which the parties are the decision makers to explore issues and design solutions.
- It is a process for mutual problem solving and not assigning blame or determining fault.
- Confidentiality is guaranteed to both parties.
- Communication and creative problem solving are stressed with the mediator present to help the parties define the problem, explore each other's interests, and work together to develop a solution, plan of action, or agreement.

- It is future oriented (i.e., what future interactions, plans, agreements, behavior changes will occur).

Mediation Models/Options

Mediation models and options vary in the following ways:

- the way local school districts can request or obtain the services of a mediator;
- the presence, absence, and extent of follow-up involvement by SEAs;
- the way mediators are selected and/or assigned;
- scheduling of the session; and
- the amount of time for a mediation session.

Comparison of Mediation and Due Process Hearings

Whelan (1996), technical assistance provided by the Florida SEA (1992), and feedback from SEA representatives and other mediation experts interviewed have suggested the following differences between mediation and due process hearing procedures:

Mediation	Due Process Hearings
—Non-adversarial	—Adversarial, polarizing with emphasis on law and winning
—Conference style	—Litigation style
—Future orientation	—Past orientation
—Win-Win mutually-acceptable	—Win-Lose result unless settled by negotiation
—Enhances communication	—Diminishes communication
—Participants decide	—Third party decides
—Flexible structure	—Strict procedural rules
—Identify mutual interests	—Positions polarized
—Collaborative problem solving	—Formal and structured
—Multiple options	—Single solutions
—Participants share expertise	—Representatives present information
—Emotional commitment	—Emotional detachment
—Lower costs (a few hours for preparation, average three to eight hours for conference)	—Higher costs (approximately 50 to 100 hours in preparation; average two days for hearing)
—Informal, confidential	—Formal, many participants, possibly observers

Procedures Common Across Mediation Approaches

Regardless of which mediation approach is utilized, the following general procedures have been used or adapted by the states:

Introduction - The mediator(s) introduces him/herself (themselves) and explains the ground rules and the rights and responsibilities of the participants. The participants are asked to sign an agreement to mediate.

Uncovering Interests - The mediator(s) asks each participant to describe their concerns and proposals/preferences for resolving the conflict.

Collaboration - The mediator(s) helps the participants discuss their feelings and concerns. Proposed solutions are also reviewed.

Caucusing - The mediator(s) meets individually with each party to further clarify their concerns. If more than one mediator is used, a mediator can meet separately with each disputing party at the same time.

Resolution/Agreement - The mediator(s) facilitates a discussion of the proposed agreement. Once the participants have reached an agreement, it is put in writing and the participants sign the agreement. If the participants are unable to come to an agreement, the parties are advised of their right to pursue a due process hearing (if one has not already been requested) or any other available dispute resolution options.

Trends and Variations in Mediation Strategies

State and local education agencies across the country have implemented several mediation variations including the use of single mediators, co-mediators, and a team or panel of mediators. Following is a description of selected single, co-, and panel mediation models that are being used.

Single Mediator Model

The majority of states that use mediation have implemented a single mediator model. Some examples are Connecticut, California, Utah, Massachusetts, Illinois, Colorado, Minnesota and Florida. The individuals who perform the single mediator role within the states are hired and paid in a variety of ways. Ahearn (1994) reported that at least 11 states use SEA employees as mediators (Alabama, Arkansas, Connecticut, Iowa, Illinois, Maine, Massachusetts, New Jersey, Ohio, Rhode Island, and Utah). Massachusetts has several full-time mediators working for an independent bureau,

the Bureau of Special Education Appeals. Ahearn (1994) also reported that contracted organizations are utilized in 16 states. For example, Michigan's mediation system is operated through a contract with a third party who manages the system. New Hampshire has relied on trained volunteers to serve as mediators for the past 15 years. Arizona is also an example of a state that uses volunteer mediators.

Approximately 13 states have a pool of impartial individuals trained in mediation including Administrative Law Judges, persons with mediation background, persons with special education background, persons independent from education, etc. (Ahearn, 1994). At least seven states—Florida, Georgia, Kentucky, Minnesota, Montana, North Dakota, and South Dakota—have had their mediators trained and certified by the Justice Center of Atlanta, Inc. (JCA).

Co-Mediator Model

Co-mediation procedures are similar to single mediation procedures except that two, rather than one, people serve as mediators and facilitate the mediation process. Within Arizona, a co-mediation process similar to that used by the Mennonite Conciliation Service has been implemented to allow more experienced mediators to be paired with persons with less mediation experience. Co-mediators are also being used in some states as a training tool; pairing a less experienced mediator with a mediator with more experience (e.g., Massachusetts, Michigan, Illinois, California, and New Hampshire). Colorado is an example of a state that has used co-mediators in situations where it may be advantageous to have a mediator with administrative/school background as well as a mediator with parent/family advocacy background in order to better meet the needs of the mediation participants. In addition, several states (e.g., Colorado, Vermont, Massachusetts, and Illinois) have utilized co-mediators in disputes involving multiple agencies or other complex issues.

Panel Mediator Model

A panel mediation model or approach is a structured mediation process that uses procedures similar to those of single and co-mediator options. The difference is that a panel (typically 3-4 persons) facilitates the mediation process.

During the late 1970s, the Community Boards Program of San Francisco, Inc. (CBSF) developed a panel conciliation model for use with disputes in San Francisco's diverse neighborhoods. The CBSF model of panel mediation is a structured three-part process of conflict resolution: case development, panel process, and follow-up. This model utilizes trained volunteers in the community to serve on mediation panels. The CBSF currently has a contract with the San Francisco School District to carry out their special education mediations.

The Direction Service Ombudsperson Project, Lane County, Oregon is also implementing an adaptation of the panel conciliation model. This Ombudsperson Project utilizes a four-step problem-solving process preceded by an opening and followed by a closing: 1) information gathering; 2) issue and interest identification; 3) option generation and evaluation; and 4) reaching agreement (Engiles, Quash-Mah, Peter, & Todis, 1995). This project recruits panels from a group of volunteers who are subsequently trained. Special education expertise is not required. In fact, the project philosophy is that expertise in or experience with special education can make it more difficult for panel members to remain impartial and not offer solutions to the parties in dispute. The cadre of trained volunteers selected are as diverse as possible in terms of gender, ethnic/cultural background, level of education, social class, age, and other characteristics reflected in the community.

The Contra Costa SELPA (Special Education Local Plan Area) in California has implemented a locally-based panel mediation process that builds on previous success with resource parents in special education, as well as community conflict resolution panels dealing with other non-special education local concerns. This process, called Solutions Panel, uses a four-person panel that facilitates special education conflict resolution. Panel members include a special education administrator, a parent, a special education service provider, and a volunteer from the community conflict resolution program. There are about 35 persons in the pool who have received approximately 30 hours of mediation/conflict resolution training. Because the Contra Costa SELPA serves 16 local school districts, it has been important to have a sufficiently-large pool of trained persons so that Solutions Panel members chosen for a particular panel are not from the school district in which the dispute or concern originated.

The Solutions Panel follows a five-stage mediation process: 1) opening/setting the ground rules; 2) identifying the issues using two-minute segments for each party to present concerns and to react—with as many two-minute segments as needed for communicating and clarifying the concerns; 3) allowing time for the parties to face each other and discuss how they feel about their concerns, needed communication, and desired solutions; 4) problem solving across the participants regarding possible solutions, with the panel assisting to focusing on one or two solutions; and 5) developing a written agreement across the parties. Solutions Panel mediations last approximately five hours. Contra Costa staff feel that a strength of this process has been the emphasis on early resolution and a locally-based option that focuses on building positive short-and long-term relationships between parents and school personnel. Solutions reached in this panel mediation process have been found, by those education agencies that have used them, to be practical and reality-based, as evidenced by the high rate of successful special education agreements.

The LaGrange Area Department of Special Education, Illinois representing 15 participating school districts and 55 schools, has utilized Advisory Review Panels for the past fifteen years. Depending on which school district within the cooperative has the disagreement, three or four

persons from outside the district with the conflict or concern are selected to serve as Advisory Review Panel members. Depending on the extent and complexity of the special education issues in dispute, a larger Advisory Review Panel may be selected. In addition, the LaGrange Area Department of Special Education utilizes the state mediator when there are issues that are more regulatory in nature. Approximately half of the mediations conducted each year are resolved through the use of the local Advisory Review Panel.

Benefits of Mediation Models

Following are selected advantages for single mediator and co-mediator/panel mediator models which are found in the Arizona technical assistance document (1995) as well as discussed in telephone conversations with a number of SEA and mediation contacts around the country.

Single Mediator:

- Mediation is less costly because fees and travel expenses are provided to only one mediator.
- There are fewer scheduling conflicts.
- Use of one mediator can prevent parties in dispute from perceiving that two or more mediators are not in agreement. For example, use of a three-person mediating panel can result in an "odd man out" perception.
- Co-mediating with someone new can feel awkward and frustrating, particularly if skills are not well matched.
- Personal and emotional issues do not need to be discussed with more than one person.
- The single mediator may be more flexible about following an alternate strategy during the mediation.
- Parties may find a single mediator easier to "read" and understand.

Co-Mediators/Panel:

- The diverse characteristics of the disputants (e.g., male/female, ethnic group, and parent or school affiliation) can be better represented with more than one mediator.

- There is a better chance for the disputants to feel a sense of trust with at least one of the two mediators or one of the panel members.

- It is less likely that the mediation process will be "co-opted" by one of the parties in dispute if there is more than one mediator.

- Disputing parties have the advantage of the combined skills of two or more mediators which can enhance and complement each other.

- Co- or team mediators can learn new techniques from each other. Less experienced or newly-trained panelists can work with more experienced mediators/panelists.

- Co- or team mediators can model cooperative problem solving and direct dialogue for the parties in dispute.

- Having a partner(s) can ease the load and tension of mediation, especially in multi-party and difficult cases.

- The presence and collective energy of more than one mediator can create additional synergy and encourage parties to work hard to resolve their problem.

OTHER INFORMAL AND FORMAL ALTERNATIVE DISPUTE RESOLUTION STRATEGIES BEING USED IN SPECIAL EDUCATION

State and local/regional education agencies across the country are also implementing other informal and formal alternative dispute resolution strategies which can positively impact the culture of the school and the community and result in more frequent resolution of differences when they occur between students, school staff, and parents. McDougall (personal communication, February 20, 1996) has stressed the importance of using multiple strategies, to impact the school/community culture, that focus on an "interest-based" problem solving approach prior to and along side of a "rights-based win-lose" approach.

Following is a discussion of several selected alternative dispute resolution strategies being used across the country. Also included is a brief description of efforts within California and Michigan to implement a broad array of formal and informal alternative dispute resolution options.

Individual Strategies

Some states use *advocates* or *neutrals* to work with school personnel and parents before and during IEP development/implementation (described more fully later in this section). These neutrals facilitate IEP meetings. An independent *ombudsperson* is available to provide parents with information about special education and how to access needed services. Within Michigan, the Ann Arbor Public Schools Equity Office provides an ombudsperson to carry out fact finding when parties have tried unsuccessfully to settle an issue but are still willing to work with a neutral third party. The ombudsperson begins with fact finding to determine if it would be more appropriate for an office other than the Equity Office to handle the specific issue. Fact finding or gathering data can also be done by bargaining units, Human Resource or Instructional Services, supervisor, or managers. When the ombudsman does fact find, depending upon the specific situation, the ombudsman may or may not make recommendations to the appropriate decision maker as a result of informal mediation or conciliation.

Group Strategies

Impartial Reviews: An impartial review team is two or three impartial/knowledgeable professionals who spend one full day or two half days on site to review the situation in conflict and render a written "second opinion." The "second opinion" is non-binding, but it can be introduced as evidence at a subsequent hearing. Speech therapists, social workers, psychologists, physical therapists, and occupational therapists are the most common team members. Impartial reviews are utilized by the Wayne County Intermediate School District (Michigan) to assist with disputes over evaluation or identification. Team members are recruited from both the LEA and Intermediate School District-operated programs.

Pre-Hearing Conferences: Several states use pre-hearing conferences for a variety of purposes. The Alaska state law requires due process hearing officers to hold pre-hearing settlement conferences conducted by hearing officers. Concerns about impartiality dilemmas, generated when the same hearing officer conducts both the settlement conference and the due process hearing, are currently being explored. Massachusetts offers pre-hearing conferences which hearing officers are free to conduct as settlement conferences. Pre-hearing conferences are also held in Arizona for the purpose of defining the issues and establishing ground rules for the due process hearing. Typically, these pre-hearing conferences are conducted via the telephone. Although not the express purpose, agreements are sometimes reached eliminating the necessity for a formal hearing.

Iowa operates a special education pre-appeal review process (pre-hearing conferences) as an initial step for an eligible pupil, parent or guardian, school district, or area education agency when there is a dispute relating to identification, evaluation, placement, or the provision of a free appropriate public education. The purpose of the special education pre-appeal

review is to clarify the issues in the dispute, enhance communication among the parties involved, and insure that procedural safeguards have been followed. The overall intent of this process is to reach mutually agreed-upon solutions and reduce the need for formal special education appeals. The pre-hearing conference includes two representatives from the Department of Education (including the staff member who administers the program) and a content expert related to the issue in dispute or a mediator provided by the Department of Education.

Advisory Opinion Process: The advisory opinion process is a case assessment process, positioned in sequence between mediation and due process, that allows parents and school districts an hour each to present their case, using witnesses and documents to a hearing officer. At the end of the two-hour period, the hearing officer issues an oral non-binding advisory opinion. Based on this advisory opinion, the parties may re-assess their respective positions and elect to settle their differences, mediate, or proceed to full hearing with a different hearing officer.

The Massachusetts SEA is also currently piloting (January-June, 1996) an advisory opinion process which is voluntary and both parties must agree to participate. The parties may only request an advisory opinion after, or simultaneously with, a due process hearing request. Upon receipt of an advisory opinion request, the Bureau of Special Education Appeals in Massachusetts assigns a hearing officer and schedules a full hearing date with a different hearing officer in the event the case is not resolved through the advisory opinion process. One of the concerns that prompted the development of this process was the need for increased access to due process hearings for families that do not have resources for an attorney.

Neutral Conferences: Prompted by legislative action, New Hampshire is implementing neutral conferences in which neutrals function somewhat like an arbitrator. The neutral listens to the facts and merits of the case on each side and then issues a non-binding decision. Neutrals are persons from varied backgrounds that have been identified and agreed upon by the school districts and the Parent Training and Information Center (PTI).

A Continuum of Alternative Dispute Resolution Procedures

There are at least two states that have implemented a broad range of alternative dispute resolution. The California SEA became concerned about a 51 percent increase in due process hearings during the first seven months of 1994 (California State Department of Education, 1994). In response to this mushrooming of due process requests and a desire for a less adversarial, costly, and formal system, the California SEA established an Institute for Alternative Dispute Resolution. The purpose of this Institute is to develop a statewide system of local processes for solving conflicts, and to encourage schools and parents to build trust and work out disputes before turning to the legal arena.

A "multi-door" approach to resolving disputes involves two levels of conflict resolution. At the primary level, conflict prevention is the goal. Preventative activities include conflict resolution training, negotiation training, providing access to a placement specialist and ombudsperson, and partnering sessions. The secondary level deals with conflict resolution, including solution panels, early neutral evaluation, fact finding, and early access to an ombudsperson. A display of California's "Multi-Door Access, Alternative Dispute Resolution Process," can be found in Appendix A of this document.

The Institute is promoting a "multi-door" approach to the development of new, creative methods of resolving problems between parents and local school districts at the earliest level. The Institute is also encouraging agreements with county offices of education and SELPAs to set up implementation sites at the local level with the assistance of local community mediation centers. The community mediation centers are funded by surcharges on civil filing fees (California State Department of Education, 1994).

There are several school districts in California that exemplify the growing emphasis on early conflict resolution that is locally-based. For example, the Contra Costa SELPA uses a pool of resource parents trained in mediation/conflict resolution. These resource parents work on relationship building between parents and school personnel, and provide several services for other parents including "parent to parent" consultation, assistance in identifying options, helping parents find resources from other agencies, and linking parents with other parents with similar issues and concerns. Resource parents also attend IEP meetings to provide additional assistance and advocacy for the parents. Several school districts within the Contra Cost SELPA have also sent their school staff and parents to the training provided by the Community Justice Conflict Resolution Program. This training is also open to school personnel and parents.

The alternative dispute resolution system within the El Dorado SELPA, California contains four components: solution panels, prevention, training, and evaluation. Solution Panels are utilized in a similar way as in the Contra Costa SELPA. An information checklist for families is used that makes parent rights and responsibilities user friendly. Future considerations include the use of a *room mother* in each special education classroom as an additional support to parents to help facilitate access to resources. A *transition support group* also provides support to parents such as a list of parents and their area of expertise and assistance to other parents. When issues cannot be resolved at the school or district level, the following is available: consultation from the school district Special Education Advisory Committee representative, support from the SELPA Program Specialists, information provided by SELPA Director, or mediation by the Solutions Panel. The prevention component also offers on-going negotiation skills training to parents, teachers, and other interested parties, as well as continuing public forums designed to offer information in various areas, including how to access services for children with exceptional needs. The Intake Coordinator, who is trained in negotiation and mediation skills, may facilitate the resolution of conflicts prior to

convening a Solutions Panel, but also facilitates the initiation of the Solutions Panel process. The evaluation component includes both user satisfaction surveys and design team monitoring so that the system can be modified and enhanced based on informed data.

The Michigan Department of Education has also been exploring a broader continuum of alternative special education informal and formal dispute resolution options. A Special Education Dispute Resolution Study Group has completed a study of dispute resolution alternatives in special education and recently issued a report. The Department of Education is currently utilizing these recommendations in a request for proposal (RFP) to implement/legitimize expanded dispute resolution procedures throughout the State of Michigan. This report included the following options on the continuum of dispute resolution strategies:

- An administratively-independent ombudsperson, with access to management and advocacy channels and knowledge of special education, provides the parties with information about how the system works and options for resolving special education disputes, and serves as a channel of communication between parties.

- Advocates or neutrals who are available to work with the parties before IEP intervention to examine issues and explore options for resolving potential disputes (carried out by the Parent Training and Information project).

- A neutral person to facilitate IEP meetings.

- A conciliation conference, occurring after or at adjournment of the IEP meeting, in which the parties can "step back" to explore options for resolving a disagreement over the IEP (used by Wayne County Regional Education Service Agency).

- Non-binding arbitration in which an arbitrator or arbitration panel reviews the issues and options with the parties and makes recommendations for settlement that are not binding on the parties (used by the Kent Independent School District).

- Mediation in which a neutral third party works with the disputing parties to clarify issues, generate options for settlement and reach an agreement (now carried out by the Michigan Special Education Mediation Services).

- Due process hearing in which a hearing officer is appointed to hear the evidence presented by each party and render a decision.

- Appeal to a state or federal court when a party is not satisfied with the decision of the hearing officer.

LOCALLY-BASED CONFLICT RESOLUTION OPTIONS

Parent/Professional Partnerships

A number of state and local education agencies have implemented parent/professional partnership projects that are aimed at enhancing communication between parents and school personnel, and minimizing disagreements and conflicts. For example, the Arizona SEA has supported several parent support efforts, including PALS (Parents Liaisoning with the Schools), in which parents serve as resources to other parents to assist in communication and in resolving differences with the schools.

The Marquette-Alter Intermediate School District in Marquette, Michigan has implemented a pilot Parent/Educator Partnership project. The purpose of this project is to train key parents and educators to achieve more effective communication skills which focus on: the learning needs of children, listening to one another, identifying areas of concern or factors which stimulate specific concerns, asking meaningful questions, clarifying potential problem areas, developing options for consideration, keeping emotions "in check," using family-focused terminology/strategies for instructional implementation, and understanding conflict (personal communication H. Spicknall, Director, Michigan Special Education Mediation, February 27, 1996) This proactive dispute resolution process is intended to encourage mediation in the local community and to implement resolution-oriented strategies that minimize disputes.

Peer Mediation Programs

Many schools and school districts have implemented conflict-resolution programs for students and adults. For over ten years, the American Bar Association's Section of Dispute Resolution has been committed to supporting the implementation of school-based peer mediation. Although not specifically related to special education disputes, the use of peer mediation has enhanced cooperation and improved the culture within many schools. In addition, the National Association for Mediation in Education (NAME), originally in Massachusetts and now part of the National Institute for Dispute Resolution (NIDR), continues to promote the development, implementation, and institutionalization of school and university-based conflict resolution programs and curriculum.

In 1988, the first National Conference on Education and Mediation was held. Representatives from more than 200 schools (e.g., parents, teachers, and administrators), major education associations, dispute resolution school program sponsors, and dispute resolution organizations attended. By 1991, there were at least 1,000 public schools with dispute resolution activities. Annette Townley, Executive Director of NAME, has estimated that more than 5,000

schools nationwide offer some kind of conflict resolution program (Unpublished handouts provided by NAME).

Typical strategies include training students to mediate disputes among their peers, teaching conflict resolution as part of the curriculum, and/or training staff in conflict-resolution skills. The most successful school programs involve both students and educators because they build a school community in which all members share common norms and strategies for dealing with conflict. The six steps of peer mediation are similar to that of other mediation programs: introduction, uninterrupted time to present concerns by the persons in dispute, identifying the problem, brainstorming solutions, checking solutions for workability, selecting win-win solutions, and follow-up and agreement. A number of school-based mediation programs include in-depth training for teachers, administrators, and parents so that a common language and approach to conflict is shared (Kestner, P.B. & Ray, L., date not specified).

Lawyers Adopt-A-School Program

A Lawyers Adopt-A-School Program has been implemented in Montgomery County, Maryland. In this program, the law firm adopting the school works to develop and maintain a school mediation program, provides resources for the initial training of the mediators, and gives continued support to the program. This program enriches the school by involving the community and the business sector, providing role models, and assisting teachers to extend the curricula (miscellaneous handouts from the American Bar Association, February, 1996).

Staff Development/Training in Conflict Resolution

Several state and local education agencies have provided workshops, seminars, and other training opportunities for school district staff (general and special education teachers and administrators) and for parents focused on conflict resolution building (e.g., communication, problem solving, and conflict resolution). For example, the Illinois, the Massachusetts, and the Minnesota SEAs periodically provide training on conflict resolution and mediation for school district personnel and parents. The Vermont and the Arizona SEAs offer training in mediation and conflict resolution training targeted at parents, in cooperation with the Vermont Parent Training and Information Center (e.g., strategies for resolving differences and conflicts informally, ways to keep communication channels open, as well as issues that can be solved through mediation).

The Colorado SEA has developed a videotape on conflict resolution for school district personnel. The Michigan Special Education Mediation Services (MSEMS) has also developed dispute resolution materials and provided dispute resolution workshops for local and intermediate school districts throughout Michigan.

The Iowa SEA staff and staff from the Area Educational Agencies have received training in mediation and conflict resolution. This training has been provided by the Iowa Peace Institute. Finally, the El Dorado County Special Education Local Plan Area (SELPA), California is an example of a regional education agency that provides locally-based staff development for teachers, administrators, and parents in mediation, conflict resolution, and communication skills.

Although the implementation of Lawyers Adopt-A-School and peer mediation programs have not specifically related to special education, it is the assumption of this author that these programs can positively impact the culture of the school and the community, and result in more frequent resolution of differences when they occur between students, staff, school staff, and parents related to students with and without disabilities. Staff development in conflict resolution strategies can also enhance problem solving and resolution of differences between school personnel and parents.

LESSONS LEARNED AND OBSERVATIONS

As state and local education agencies review, modify, and/or expand their existing formal and informal mediation and other dispute resolution procedures as alternatives to the formal due process procedures and court proceedings for resolving special education disputes, there are a number of "lessons learned," and "observations" that should be considered.

Mediation is effective in resolving special education disputes: Experience across the country indicates that all types of mediation approaches have proven to be effective in resolving special education disputes without pursuing expensive and time-consuming due process or court proceedings. Telephone conversations with SEA contacts and other mediation experts during this study have reported high rates of conflict resolution and agreements with mediation (e.g., agreement rates of at least 80%). Some states have gathered formal or informal data regarding their mediation program. For example, a number of states have reported that mediation results in agreement between disputing parties in 80-85 percent of the cases (Illinois, Vermont, Massachusetts, Colorado, and California). Data received from Minnesota and Arizona indicate a 90 percent success rate.

The Contra Costa SELPA contact reported that agreements were reached in 100 percent of the mediated cases during the last school year (1994-95). This contact reinforced the importance and value of locally-based mediation/conflict resolution strategies in building positive relationships between parents and school personnel that can sustain over time. This contact person also cautioned that, as with most systemic change, it takes time to change attitudes and build cultures that resolve differences as soon as possible (e.g., systematic efforts over a four-five year period).

Costs and sources of support for mediation are important planning issues: Mediation within special education must be made available to parents at no cost. The decision whether to use volunteers or paid mediators varies by state, as well as the extent to which the SEA pays for mediation costs. A number of SEAs including Connecticut, Minnesota, Massachusetts, and Colorado provide full support for mediation costs. States such as Arizona and New Hampshire utilize volunteers, but the SEA pays for the modest travel costs of these volunteers. In Montana, the Office of Public Instruction pays for mediation costs not to exceed $10,000. Mediation parties, however, who choose to involve their attorneys in mediation are responsible for their own attorney fees. In addition, any incidental costs are the school's responsibility. The Florida SEA pays mediator fees and the cost of materials, administration, and training. The school district or public agency pays for travel, per diem, and communication. Michigan's flat mediation fee is $400, which is paid by the school district. Within the states reviewed, paid mediators typically receive from $250-$400 per mediation session which usually last from one-half day to a day and a half (maximum).

The costs of mediation are minimal and paid for in a variety of ways. Interviewees suggested the following planning issues for SEA consideration. Will there be a perception that volunteer mediators are less trained and less effective than paid mediators? Do the standards of mediation practice differ or appear to differ for voluntary and for paid mediators? Does supervision of paid mediators differ from supervision of volunteer mediators? Can high standards for mediator training be expected for volunteer mediators as well as paid mediators? Should payment of all paid mediators be the same regardless of mediator background?

Sources of funding for mediation can include IDEA (Part B) or state funds. Additional support might be available from other state agencies such as attorney general, district attorneys' office, administrative offices of the courts, human service agencies, and juvenile justice divisions. Other mediation resources could be private foundations, state and local bar associations, universities, and business or corporate organizations. States could also utilize disbursements from the surcharges on certain court filing fees that are distributed on a municipality, county, or state-wide basis. States might also look to Interest on Lawyers' Trust Accounts (IOLTA) as another possible support for mediation. The IOLTA program requires lawyers and law firms to establish interest-bearing accounts for their clients' funds held for short periods. The interest on these accounts is forwarded directly from the bank to a charitable entity established by a state or local bar association. Whether attorney participation in IOLTA is mandatory depends on state guidelines. Minnesota, North Carolina, and Virginia have made IOLTA funds available to community dispute resolution programs. (NIDR. 1994), although not specifically for special populations.

Mediation is cost effective: As indicated above, the cost of mediation varies across the states; however, costs are minimal. Many successful mediations are completed in a half day, but range from two to four hours minimum, to a day and a half maximum. For example, the average

mediation session within Minnesota is 6.3 hours. This compares to the typical due process hearing that lasts an average of 2-4 days. Many due process hearings have gone on for more than a week.

Whereas the costs for mediation typically range from payment of travel expenses only (when volunteer mediators are utilized) to less than $1,500, costs for due process proceedings are significantly higher. Crowley, Smith and David (1991) reported that due process hearings within Illinois can range from $5,000 to $30,000, when expenditures for the hearing officer, attorney's fees, court reporters, transcripts, staff time, and other costs are included.

Zirkel (1994) provided an example of a due process hearing, concerning a child in Pennsylvania, that spanned nineteen sessions and almost two years from filing until the final decision. The cost of the transcript alone was $27,000. The cost of the hearing officer, including travel expenses, was $20,000. Other due process hearings have lasted as long as 25 days over several months, resulting in even higher costs. In addition, the passage of the Handicapped Children's Protection Act of 1986 (HCPA) has further added costs, in that attorney's fees are recoverable in administrative and civil action proceedings including pre-hearing settlements (Katsiyannis, 1993).

Together with the high rate of reported success in mediated agreements and the cost comparisons between mediations and administrative and judicial hearings, the cost effectiveness of mediation procedures is evident. However, cost comparisons must also include the human resources necessary to carry out administrative and judicial hearings, as well as emotional distress often involved in due process hearings. The mediation process serves as a catalyst for improving communications between parents and educators, and helps to build effective short-and long-range partnerships. These factors must also be considered when evaluating the cost effectiveness of mediation.

Successful mediation depends on mutual commitment to reach agreement and openness during the process: Mediation may not be appropriate for all special education disputes. Engiles, Quash-Mah, Peter, and Todis (1995) have identified four circumstances that could make a situation inappropriate for mediation: 1) one or both parties require(s) a legal interpretation of the IDEA or other applicable law; 2) the goal of the parent is for the school district to make a personnel change; 3) either of the parties in dispute is unwilling to participate in a collaborative, problem-solving process; and 4) there is the inability of one of the parties to participate in or benefit from the mediation process (e.g., mental illness, diminished capacity, etc.). To have successful mediation and agreements, a climate of openness and commitment to the process must be present. All parties must be willing to listen, to compromise, and to come to mutual agreements.

Involvement of stakeholders is important in the planning and implementation of mediation/alternative dispute resolution procedures: As in other system change planning

efforts, it is important that stakeholders (including those persons who will carry out the dispute resolution procedures and those who will be impacted) be involved in the evaluation/review of existing alternative dispute resolution efforts, including mediation, as well as in the planning of any revisions. The Minnesota SEA spent considerable time building field consensus on their mediation system prior to implementation. The Michigan SEA involved a study group to look at their special education dispute resolution options and has acted on the findings made by this group. Massachusetts involved a group of special education administrators, attorneys, and parent advocates to develop the parameters of a neutral option, advisory opinion process, which, as stated earlier, is currently being piloted.

A number of individuals have stressed the importance of broad communication across the state so that parents, advocacy groups, principals, and other school personnel are aware of the availability and procedures of mediation to resolve special education conflicts. Unless there is broad awareness of the availability, benefits, and outcomes of mediation and other alternative dispute resolution strategies, there may be low rates of participation.

Successful mediation is dependent on skilled mediators: The competence of the mediator(s) is strongly emphasized in the literature and by individuals involved in mediation (Gallant, 1982; Arizona Department of Education, 1993; California State Department of Education, 1995; and Florida Department of Education, 1992). There are a number of important points that must be considered.

Selection of mediators must be systematically carried out: After selecting the mediation option to be implemented, mediators should be selected with care. Persons selected should not have previous experiences that would result in a conflict of interest. They should also be flexible, believe in consensual problem solving, be available to serve, and committed to completing mediation training. Massachusetts uses a criterion-based selection process to choose mediators, employing the evaluative instrument developed by Chris Honeyman at Wisconsin Office of Employee Relations. This instrument rates potential mediators on their performance in a simulated role play dispute.

Interviewees in this study cautioned against using too large a pool which might result in too few cases per mediator and limited technical and procedural experience. Initially, for example, the Colorado contact indicated that the SEA selected 24 trained mediators for their pool, but found that approximately 5 trained mediators were needed. The Vermont and Arizona contacts, however, stressed the importance of having a large enough pool so that mediators with particular expertise, such as with young children or adolescents, can be matched with particular parent/child or other disputant needs.

Effective mediators come from a variety of employment and skill backgrounds: As stated earlier, mediators have various institutional affiliations (e.g., state educational agency, local

education agencies, Administrative Law Judges, private consultants, parents, or volunteers). There was not consensus among interviewees regarding the most appropriate affiliation or employment of mediators. Some persons felt strongly that mediators should not be state or local education agency employees so that disputants will not perceive them as being biased toward an administrative perspective. The perception of a conflict of interest could arise in the use of state education agency personnel as mediators who also carry out monitoring of the school district programs involved in special education disagreements. Some parents may be intimidated by a mediator "designated" by the SEA, a distant office or bureaucracy. Other parents might feel more comfortable having a mediator who is selected by the SEA and who is independent from the local school/community.

In Michigan, persons who work for the State Department of Education are not mediators unless their role is independent from the hierarchy, such as in an office of dispute resolution, because of the perception of, if not actual, bias.

Mediators utilized within the states have varied backgrounds (e.g., mediation, legal, or special education). In Michigan, for example, mediators have diverse backgrounds, but must be knowledgeable of special education, have demonstrated problem-solving ability, and then be trained in the mediation process. Some SEA contacts (including New Hampshire and Vermont) indicated that mediation background required for mediators is more critical than specific special eduction background. The Colorado SEA representative indicated a preference for selecting professional mediators and providing them with special education training. Other SEA contacts (including Florida) stressed the importance of selecting mediators who are special educators because of the complexity of special education and the need to have specific knowledge about the provision of quality programs and services.

Although mediators can have a legal background, some SEA contacts, such as Florida and Illinois, indicated a preference for not using attorneys as mediators. Other SEA contacts (including New Hampshire and Arizona) reinforced the importance of minimizing the "legalistic" nature of mediation which can occur if the mediator is an attorney.

In-depth training for mediators is essential: Mediation is a skilled process and requires trained persons, and all SEA persons contacted reinforced the critical importance of providing in-depth training for mediators. There is general agreement about the skills and knowledge needed by special education mediators.

Gallant (1982) identified the following skills and knowledge necessary for achieving success as a mediator: effective oral and written communication, job motivation, ability to learn, ability to create a good first impression, initiative, sensitivity, listening, tenacity, tolerance for stress, problem solving ability, judgment, and prior negotiation experience, detailed knowledge of IDEA and other relevant state and federal legislation and regulations, and general knowledge of special

education programs and related services. In addition, a mediator must possess skills in the following areas: group management, assimilating individual case data, communicating special education needs of the child, assessing student needs, resolving non-adversarial disputes, and writing contracts or agreements. Honoroff, Matz, and O'Connor (1990) suggested the following categories of mediation skills: investigation, inventiveness and persuasion, empathy, interaction management, and strategic direction.

In training educators to be mediators, it is essential to eliminate any negative attitudes they may have toward parents or school personnel. In addition, the mediator must have the ability to step back and look at a situation from both parties' point of view. Even though mediation often involves restoring communication between parties, mediation must be separated from therapy or treatment. The mediator must clearly know that his/her role is to facilitate the process and not to provide therapy or impose his/her own solutions. Mediators must also be able to feel comfortable with face-to-face conflict situations.

Several SEA contacts indicated the importance of having simulation experiences and opportunities for trainees to practice mediation skills as a part of their mediation training programs (Arizona, Massachusetts, Minnesota, and California). It was noted by interviewees that opportunities to practice skills can help trainees gather "insight" into their own attitudes. For example, individuals with legal or advocacy background may need to examine a tendency to be adversarial or confrontative, depending on the experiences they have had with the schools.

Mediation must seek to reduce the impact of power imbalances between parties on the progress of the negotiation: One dilemma inherent within mediation is the potential power imbalance between parents and school personnel in dispute over special education identification, evaluation, or placement/program. A number of persons have written about how power imbalance can compromise the fairness of the mediation process and agreements reached (Mastrofki, 1992; Goldberg, 1989; and Levine, 1986). Parents are accustomed to following the guidance and expertise of educators, and may be uncomfortable questioning educators. School officials may have an advantage over the parents in terms of experiences, training, and familiarity with "jargon." Parents may be intimidated by their "unequal" background, training, ability to commit school district resources, etc. The mediator must be very conscious of power imbalances of various kinds that are present during the mediation session so that the process as well as the agreements reached are fair to both parties. Mediators have the obligation and capability to reduce the impact of power imbalances on the negotiation and outcome by addressing such factors as *stonewalling*, intimidating, claiming a list of non-negotiable demands, etc.

Mediators must be impartial and avoid conflicts of interest: Mediation is a neutral and unbiased process in which the mediator is not partial to either disputing party. Mediators need to know that accepted practice is to disclose to both disputants any previous relationships with either

party. Even if both parties acknowledge and accept this previous relationship, the mediation can still be uncomfortable if the mediator has previously worked with either party.

A dynamic occurring during the mediation that can impact the impartiality of the mediator might be personal reactions on the part of the mediator toward either party (e.g., sympathy or antipathy). A mediator might also share a specific identification with one of the parties in dispute such as race, sex, class, religion. This could be an actual or perceived reason to question the mediator's impartiality. Mediators must be sensitive to maintaining impartiality throughout the mediation process.

Mediator conflicts of interest may be subtle. For example, the mediator could tend to encourage agreements that favor the party providing mediation compensation. There could also be a perceived conflict of interest if the mediator is an employee of a state or local education agency (e.g., agreement options might tend to favor administrative considerations of cost or feasibility). Similarly, if the mediator has a legal background, there could be a tendency to discourage resolution at the mediation level. A mediator with an advocacy background could also bring "baggage" to the mediation, such as previous conflicts with school personnel. The above examples could be real conflicts of interests and must be avoided. Mediation training should provide experience in selecting strategies to deal with perceived conflicts of interest, depending on the background of the mediator.

Confidentiality must be maintained prior to, during, and following the mediation: A fundamental principle of mediation is that it is a private process. If confidentiality is assured, private, potentially sensitive information can be more freely discussed. Mediators should take steps to emphasize the importance of confidentiality during and following mediation to both parties. However, confidentiality cannot always be guaranteed following the mediation unless all parties act in good faith. Confidentiality can be a mediated element in the agreement which both parties sign before the mediation proceeds. The mediator is most likely to hear confidential materials from parties during the private caucus. The major responsibility for preserving confidentiality is that of the mediator.

Mediation is a consensual process, and self-determination must be preserved: Mediation is, by definition, a consensual process in which both parties must consent to any proposed settlement. Baruch Bush (1992) has noted that there must be an opportunity for free and informed choice by both parties regarding any options for settlement. The mediator may find factors impinging on the consensual process. For example, there may be a possibility of coercion by an external person, or one party may be intimidated by the other party. The mediator has a responsibility to facilitate the mediation so that it continues to be a consensual process.

In addition, another fundamental principle of mediation is self determination by the mediating parties and control over whether, and on what terms, to settle disputes, without imposition

from any outside authority. The mediator facilitates the problem solving process, but is not supposed to be directive or controlling in any way. A dilemma can arise if the parties ask the mediator for a recommendation or a decision, or if the mediator does not think that the solution being discussed is good practice, legal, or fair. The mediator may find a gray line between persuasion and taking control and being overly directive. The mediator might also find that one of the parties is uninformed or incapable of understanding the options and their implications or results. Mediation training should include strategies to deal with potential ethical dilemmas or tension between two competing principles (e.g., the need to reach a legal and fair decision and the need to preserve self-determination and mutual decision making of the parties, Baruch Bush, 1992).

Alternative dispute resolution, including mediation, should be initiated early: Several people interviewed (including the California and Florida respondents) discussed the importance of holding mediation as soon as disagreements occur. Mediation is most successful when it is carried out before emotions are high, and before viewpoints and positions become too "entrenched" and unmovable. Mediations within Massachusetts are available when parents reject an educational plan. SEA staff in Vermont review with any concerned party (parent or school district person) due process procedural options, but stress the importance of mediation as a conflict resolution option early in the process. The philosophy in Vermont, as well as in a number of other states, is that mediation should be available and encouraged any time school district personnel and parents reach an impasse in making special education decisions. Although due process and court avenues are important procedural safeguards for children with disabilities and their families, it is important to resolve conflicts at the earliest possible time. One person interviewed indicated that conflicts are best resolved when they are kept at the "lowest possible volume" or as soon as they occur.

Preventative alternative dispute resolution procedures can encourage cooperative school/ community cultures: There is a clear trend within the states to implement alternative dispute resolution procedures that are preventative in nature. Examples of such procedures are conflict resolution training of school district personnel initiated by SEAs and school districts and peer (student) mediation programs, discussed earlier in the report. An important goal of these peer mediation programs is to reinforce a school culture of conflict and difference resolution.

Agreements must be implemented following the mediation: A final challenge of mediation is the ability to put agreements into action following the mediation session. Full implementation of the agreement depends on the willingness of other school personnel, not party to the mediation, to do so. Information from a number of states indicates a relatively high rate of agreement implementation. An incentive to implement mediation agreements is the cost of due process hearings. Also, as mediation agreements often amend IEPs, implementation is subject to complaint procedures and compliance enforcement by the SEA.

Persons interviewed stressed the importance of active parental involvement and ongoing communication between school personnel and parents regarding the implementation of mediation agreements. A dilemma, however, noted by several persons interviewed, is that the incentives for utilizing mediation might be diminished by lack of trust that agreements reached through mediation will be implemented. However, it would seem that the benefits of mediation--the reported high success rate of reaching mediation agreements and implementation of such agreements--would outweigh concerns and uncertainties about the implementation of mediation agreements.

Evaluation information is needed regarding the short and long-term impact of mediation and other alternative dispute resolution procedures: As state and local education agencies initiate, further implement, or adapt alternative dispute resolution procedures, including mediation, on-going evaluation information is essential. Important data include demographic information on persons who use mediation and other dispute resolution procedures, user satisfaction, extent of resolution agreement rate, and implementation of agreements. There is also insufficient information regarding the most efficient and effective mediation strategies. Evaluation data can help to fine tune the mediation process and provide information regarding the short- and long-term impact of mediation and other alternative dispute resolution procedures on student and family (e.g., the frequency of further disagreements between the parties following the mediation, and the extent to which the parties were likely to resolve future disagreements informally). Systematic evaluation data can also provide valuable information on the effectiveness of specific training programs for mediators. Following are examples of current evaluation efforts.

The Massachusetts SEA has established specific evaluation procedures to determine the viability and impact of their advisory opinion process pilot project. The group that developed the system will re-convene in June, 1996 to examine impact information, including an evaluation form completed by both parties following each mediation, as well as feedback from due process hearing officers participating in this pilot project.

Both Arizona and Colorado have methods in place to collect specific information about the impact of, and satisfaction with, their state mediation procedures. The Florida SEA has developed an evaluation form to obtain basic information about the mediation process and satisfaction with the mediation experience, as well as recommendations regarding initial or ongoing training of mediators, and ways to enhance the effectiveness of mediation sessions or the special education mediation process as implemented within Florida. Evaluation of the Lane County (Oregon) panel training involves both quantitative and qualitative methods. A Mediation Satisfaction Survey (Lane County Ombudsman Project) has been developed to assess participants' satisfaction with the mediation process and its outcomes.

Information gathered by the Minnesota SEA indicates that 96 percent of the mediation participants would use it again and would recommend it to others. Following is a

summary of what mediators say about why mediation was needed: communication breakdown and mistrust (39.9%), different perceptions of student's needs (19.7%), personality conflicts (9.8%), conflicts over other issues (8.7%), funding concerns (6.6%), adequacy/provision of school policies/services (3.3%), previous placement (4.9%), personnel problems (2.7%), and other miscellaneous concerns (4.4%). Fifty-nine percent of the mediations within Minnesota were initiated by parents, compared to 30 percent by school districts. (J. Van Sant, Minnesota SEA, personal communication, March, 1996).

SUMMARY AND CONCLUSIONS

After twenty years of experience with due process provisions in special education, there is growing concern that this formal dispute resolution process is unduly time consuming and open-ended, excessively adversarial, too costly (fiscal and human), and often seen as unfair. Mediation and other alternative dispute resolution processes have been implemented in virtually all of the states.

A scan across the country indicates that a continuum or spectrum of dispute resolution processes have emerged, including informal assistance/facilitation by ombudsmen or advocates prior to or during IEP conferences, mediation/conciliation, arbitration, med-arb/mini trials, pre-hearing conferences, due process, and formal adjudication. State and local education agencies have found success using single mediator, co-mediator, or team/panel mediation options. In addition, several other dispute resolution procedures are being implemented prior to due process hearings which are a combination of mediation and voluntary arbitration (e.g., impartial review team, advisory opinion process, neutral conferences, and other pre-hearing settlement agreements). Finally, there are other strategies that build and support school cultures conducive to conflict resolution and problem solving (e.g., parent/professional partnerships; peer mediation programs; Lawyers Adopt-A-School Program; and training for teachers, administrators, and parents). States have found that it is important to involve a broad range of stakeholders in the planning
and implementation of various mediation and other alternative dispute resolution procedures.

There have been a number of "lessons learned" from state and local educational agencies regarding the implementation of mediation and other alternative dispute resolution procedures. First, no one mediation option or model is best. The selection of a single mediator, co-mediator, or panel mediator depends on the nature and complexity of the special education concern and the parties in dispute. Second, mediation is cost effective compared to the fiscal and human costs of due process and judicial hearings.

Successful mediation also depends on mutual commitment to listen, explore issues, and maintain openness during the process. There are circumstances in which mediation is not

appropriate. Both parties have to provide their informed consent prior to entering into a process of mutual problem solving/solution identification. The success of mediation depends upon openness and collaboration. Successful mediation is also dependent on skilled mediators who are carefully selected. There are pros and cons regarding the affiliations of mediators, as well as their backgrounds. Although both a background in mediation and special education is preferable, successful mediation background and experience is most important. Experience across the country has yielded a fairly standard content for mediator training programs focused on communication skills, specific conflict resolution skills, tolerance for stress, facilitation skills, and analytical skills.

There are several responsibilities or obligations of the mediator that should be addressed when training mediators and others involved in dispute resolution procedures. These are reducing the impact of power imbalances between the parties in dispute, preserving mediator impartiality, and assuring confidentiality of the mediation/dispute resolution process. The mediator must also assure that mediation remains a consensual process, preserve self-determination, avoid being overly directive or conducting counseling for the parties, and avoid actual or "perceived" conflicts of interest. An important challenge of mediation is to assure implementation of the agreements reached.

Across the country, a broader continuum of alternative dispute resolution approaches and options is being implemented, including: peer mediation and other school-based mediation options; use of ombudspersons, advocates and parent/educators to facilitate communication prior to and during the IEP process; mediation; and other pre-hearing procedures, such as conferences and arbitration options. This is a significant trend because within this continuum of dispute resolution options, there is an emphasis on resolving differences as early as possible. Preventative strategies such as parent/professional partnerships, peer mediation, and on-going staff development are effective in encouraging cooperative school/community cultures.

There is a need for ongoing evaluation information regarding the short- and long-term impact of mediation (e.g., the extent of implementation of mediation agreements, impact of implementation on the student and family, and extent of further disagreements between the parties previously in dispute). Research on all aspects of alternative dispute resolution in special education (including mediation and due process hearings) is sparse. Studies of strategies currently being used would contribute to improvements and expansions of options available for successful conflict resolution between families and schools. Research can also help identify effective training strategies, as well as effective strategies to assure that mediation is a consensual process and that self determination of the mediating parties is preserved. The acknowledgment of the presence of power disparities within the mediation process has a strong conceptual base, but is not backed by sufficient empirical data. Future research in this area can help to identify organizational and structural dynamics that can either aggravate or minimize power disparities among mediation participants, as well as identify intervention strategies that can produce more equitable outcomes for mediating

parties regardless of their relative standing. In addition, evaluation data can provide information about the use and cost effectiveness of mediation and other dispute resolution options.

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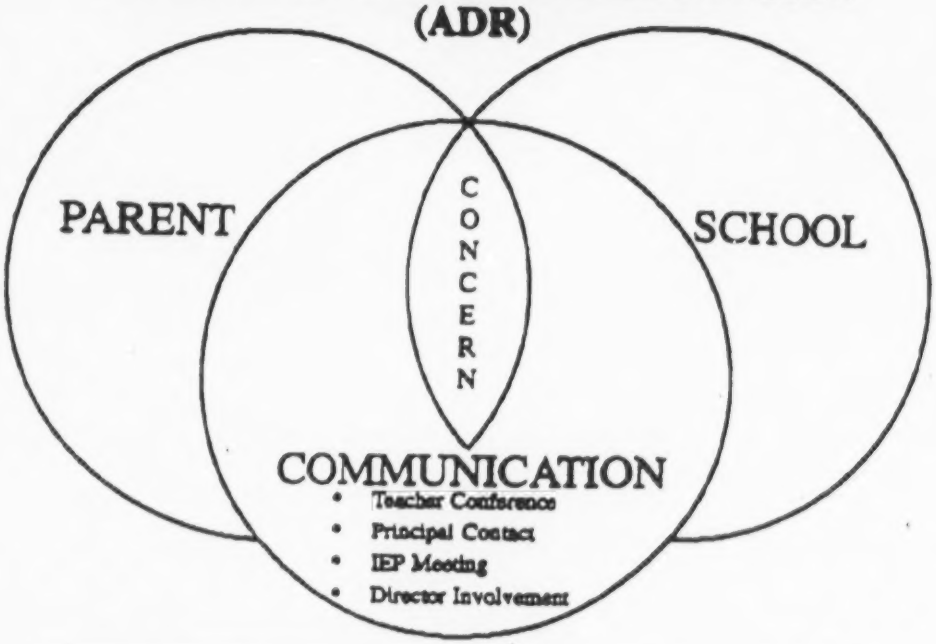
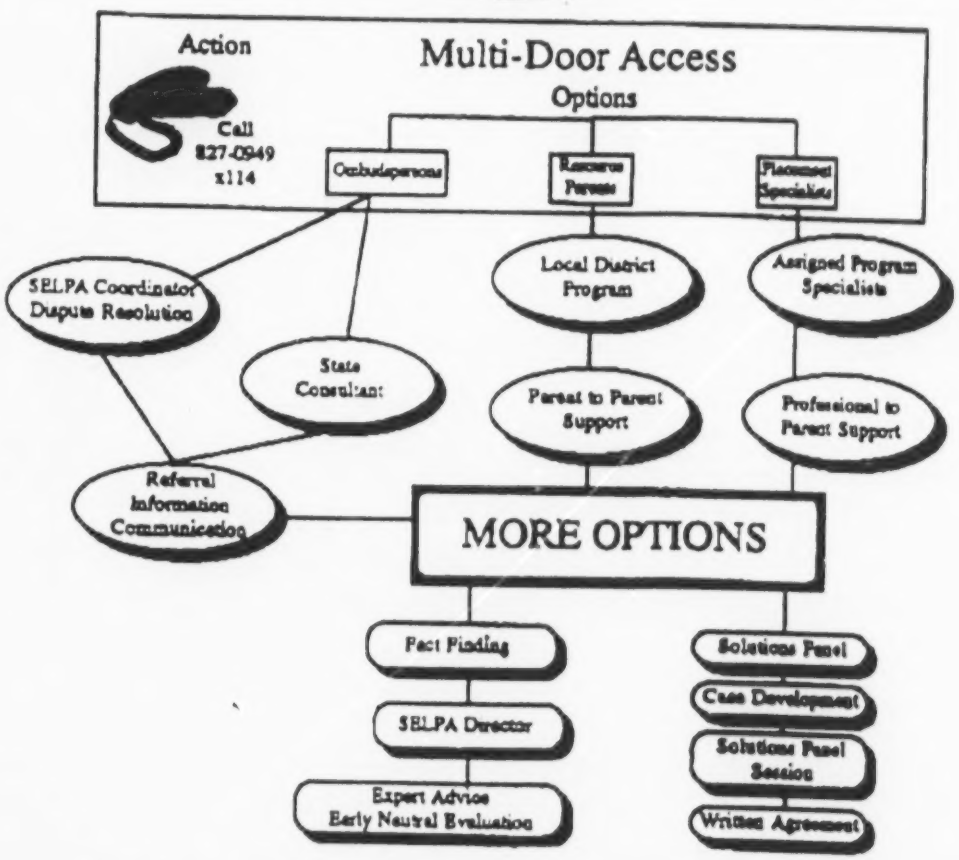
APPENDIX A: MULTI-DOOR ACCESS ALTERNATIVE DISPUTE RESOLUTION

Contra Costa SELPA

ALTERNATIVE DISPUTE RESOLUTION (ADR)





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